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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,244	09/25/2003	Mike McDonald	MMD-100	3527
7590	11/28/2005		EXAMINER	
Russell J. Egan 2328 Woodland Park Drive Houston, TX 77077			SLACK, NAOKO N	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/669,244	MCDONALD, MIKE	
	Examiner Naoko Slack	Art Unit 3635	

**— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS,  
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 12 September 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-3 and 5-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3, 5-13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

In view of applicant's amendment received September 12, 2005, amendments to the claims have been entered. Claim 4 has been canceled as requested. An examination of pending claims 1-3, 5-13 is herein presented.

### ***Claim Objections***

Claims 10, 12, and 13 are objected to because of the following informalities: in claim 10 (line 3), claim 12 (line 2), and claim 13 (line 2), the phrase "the either outer member" appears to be in error. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As stated in the previous Office action, claims 12 and 13 depend from claim 1 and recite the limitation "said resilient material" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 5 are rejected under 35 USC 102(b) as being clearly anticipated by US Patent 5,433,156 to Hutchinson.

Claim 1:

Hutchinson discloses a building panel comprising a first member of stiff corrugated material (column 5, lines 3-7), an intermediate sheet of insulative material (22, Figure 3A and column 9, lines 24-27), and a second member of stiff corrugated material (column 5, lines 3-7), the corrugated member being bonded to opposite sides of the intermediate sheet (column 7, lines 29-36).

While applicant remarks that Hutchinson's pallet has no insulating properties, Hutchinson's intermediate sheet may be formed of fiberboard or paperboard (column 9, lines 24-27) both of which are insulating materials. By definition, insulating means isolating (Merriam Webster Dictionary, 1999), and Hutchinson's intermediate layer clearly isolates thus insulates the corrugated layers from each other.

Claim 2:

Hutchinson's corrugated members may be formed from plastics material (column 9, lines 27-28).

Claim 3:

Hutchinson's corrugated members may be formed from wood pulp product (column 9, lines 24-27).

Claim 5:

Hutchinson's corrugated members are bonded to the intermediate sheet with the corrugations running parallel to each other (Figure 4D).

Claims 1,10, and 13 are rejected under 35 USC 102(b) as being clearly anticipated by US Patent 3,950,910 to Pobanz.

Claim 1:

Pobanz discloses a wall panel comprising a first member of stiff corrugated material (column 1, lines 53-54), an intermediate sheet of insulative material (column 1, lines 55-56), and a second member of stiff corrugated material, the corrugated member being bonded to opposite sides of the intermediate sheet (column 1, line 68- column 2, line 3).

Applicant remarks that Pobanz uses corrugated foils in place of the smooth layers of foils between double layers of corrugations of applicant's invention; however, Pobanz clearly uses flat layers (14, 16, and 18, Figure 1) between the corrugation layers (1, 8, 10, 12, Figure 1). Furthermore, smooth layers of foil have not been set forth in applicant's claims.

Claim 10:

Pobanz's layer of resilient material spans the outer side of an outer corrugated

member (2, Figure 1).

Claim 13:

Pobanz's resilient material spans the peaks of the corrugated member (2, Figure 1).

***Claim Rejections - 35 USC 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6-9, 11, and 12 are rejected under 35 USC 103(a) as being unpatentable over US Patent 3,950,910 to Pobanz as applied to claims 1 and 10 above, and further in view of US Patent 4,852,316 to Webb.

Claim 6-9, 11, 12:

While Pobanz states that the panels are coated with a fire-retardant and water-resistant sheet (column 2, lines 16-19), Pobanz does not disclose that the corrugated members are coated with a fungicide, fire retardant material, or mold defeating material. However, such coatings are well known in the building arts for protecting structures from decay and fire destruction. For example, Webb teaches an exterior wall panel comprising fire resistant bonded layers (column 1, line 10), the outer layer comprising a

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coating comprising a resilient acrylic resin, fiber, and a fungicide (column 1, lines 48-49).

In view of Webb, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply a resilient acrylic, fiber, fungicide coating to Pobanz's corrugated members to strengthen the panels and protect the panels from decay and fire, as Pobanz's panels are intended for building walls. Furthermore, Pobanz clearly wants to protect the walls from fire and decay, as Pobanz panels are treated for fire retardance and water-resistance (column 2, lines 16-19).

Regarding claim 12, application of Webb's coating would naturally follow the shape of the corrugated member, as a coating comprises a liquid which follows the contours of the coated surface.

*Final*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naoko Slack whose current telephone number is 571-272-6848. The examiner can normally be reached on Mon-Fri (6:00 am-2:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Naoko Slack  
Primary Examiner  
Art Unit 3635

NS

November 18, 2005